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FILED
TETON COUNTY, WYOMING
2019 JUN 11 AM 10:03
CLERK OF DISTRICT COURT

IN THE DISTRICT COURT OF TETON COUNTY, WYOMING
NINTH JUDICIAL DISTRICT

ISABEL BAEZ, as the Wrongful Death
Representative of JUAN BAEZ SANCHEZ,
Deceased; and RICK THOMAS as the
Wrongful Death Representative of
VICTORIANO GARCIA PEREZ, Deceased.

Plaintiffs,

vs.

JAMIE MACKAY, Individually and
FIRESIDE RESORT, INC.

Defendants.

PLAINTIFFS' COMPLAINT

AND

JURY DEMAND

CV NO. 17998

I. INTRODUCTION

On September 28, 2018, Juan Baez Sanchez, 42, and his friend/co-employee Victoriano Garcia Perez, 56, were needlessly killed in a trench collapse/cave-in while working at a residential construction site located at 120 S. Indian Springs Drive in Teton County, Wyoming. Their deaths were entirely preventable and caused by dangerous work conditions and a complete and abject failure to provide reasonably safe methods and reasonably safe protection for the kind of work they were hired to perform. Namely, there was no trench box and no safe means of egress from the 12' deep and 41' long trench. Mr. Baez Sanchez and Mr. Garcia Perez were hired by and working for Defendant Jamie Mackay ("Mackay") and Defendant Fireside Resort Inc. ("Fireside"). Defendant Mackay is the owner of the 120 S. Indian Springs Drive property. Based on information and belief, Mackay is also the owner of Fireside. Defendant Mackay's failures and negligence caused these deaths.



For Illustrative Purposes Only: Photograph of the Fatal Trench Taken Several Days After Both Bodies Were Recovered

The excavation work conducted at 120 S. Indian Springs Drive violated Teton County permit requirements and multiple OSHA Regulations. Daily inspections of excavation and protective systems were required. No appropriately trained person completed any inspection. Had any appropriately trained person inspected the jobsite, the fatal cave-in could have been avoided. Defendant Mackay and Fireside, as decedents' employers, did not ensure adequate cave-in protection was being used while each employee was working in a trench lacking support systems, shield systems or any other protective and potentially life saving systems. Furthermore, Defendants failed to ensure that excavated material was located at least two feet from the edge of the trench. These failures, acts, and omissions directly caused the horrifying suffocation deaths of Mr. Baez Sanchez and Mr. Garcia Perez. Defendants Mackay and Fireside are responsible and liable for each wrongful death and for the resulting damages to Mr. Baez Sanchez and Mr. Garcia Perez respective beneficiaries.

This complaint is a joint wrongful-death action brought by Mr. Baez Sanchez's wrongful-death representative, Isabel Baez, and Mr. Garcia Perez's wrongful-death representative, Rick Thomas, for wrongful-death damages to all beneficiaries, and for punitive damages to punish Defendants for willful and wanton misconduct so egregious that it killed two beloved and hard working men who provided significant financial and emotional support to their families.

II. PARTIES

1. Juan Baez Sanchez died in Teton County, Wyoming on September 28, 2018. At all times relevant to this Complaint, he resided in Teton County, Wyoming.

2. Isabel Baez is the sister-in-law of Juan Baez Sanchez, deceased. At all times relevant to this Complaint, Mrs. Baez resided in Idaho Falls, Bonneville County, Idaho.

3. Mrs. Baez is the Wrongful Death Representative of Juan Baez Sanchez. Her husband, Moises Baez, is a beneficiary of Mr. Baez Sanchez Wrongful Death Estate. The Ninth Judicial District Court in and for Teton County, Wyoming, appointed Mrs. Baez as the Wrongful Death Representative of Juan Baez Sanchez, deceased, in its May 24, 2019 Order Appointing Wrongful Death Representative (Civil Action No. 17960).

4. Mrs. Baez brings this lawsuit in her capacity as Wrongful Death Representative under the Wyoming Wrongful Death Act, Wyo. Stat. Ann. § 1-38-101 et seq., for the exclusive benefit of all persons entitled to recover under the Act.

5. Victoriano Garcia Perez died in Teton County, Wyoming, on September 28, 2018. At all times relevant to this Complaint, he resided in Teton County, Wyoming.

6. Rick Thomas is an experienced attorney, licensed to practice law in Wyoming and Arizona, who has volunteered to serve as the Wrongful Death Representative on behalf of Mr. Garcia Perez' beneficiaries.

7. Mr. Thomas is the Wrongful Death Representative of Victoriano Garcia Perez. The Ninth Judicial District Court in and for Teton County, Wyoming, appointed Mr. Thomas as the Wrongful Death Representative of Victoriano Garcia Perez, deceased, in its May 24, 2019 Order Appointing Wrongful Death Representative (Civil Action No. 17959).

8. Mr. Thomas brings this lawsuit in his capacity as Wrongful Death Representative under the Wyoming Wrongful Death Act, Wyo. Stat. Ann. § 1-38-101 et seq., for the exclusive benefit of all persons entitled to recover under the Act.

9. Defendant Jamie Miles Mackay is an individual, developer and business owner, believed to be presently residing in Wilson, Teton County, Wyoming.

10. Defendant Fireside Resort, Inc. is a registered for profit domestic corporation with a principal office at 2780 N. Moose Wilson Road in Wilson, Teton County, Wyoming.

11. Defendant Jamie Mackay is the President of Defendant Fireside Resort, Inc.

12. Based on information and belief, Mackay is the owner of Fireside.

13. Defendant Fireside Resort Inc. maintains a registered agent in Wyoming for purposes of doing business in the State. The registered agent is Defendant Jamie Mackay with a listed address of 2780 N. Moose Wilson Road in Wilson, Teton County, Wyoming.

14. Defendant Fireside Resort Inc., as a legal entity, can only act through its officers, directors, employees, and agents. As the employer of those who set policy and engage in either an active or passive role in the hiring, training, and supervision of employees, Fireside Resort Inc. is responsible for those acts and/or omissions which were the direct and proximate cause of Mr. Baez Sanchez' and Mr. Garcia Perez' deaths and resulting damages to Plaintiffs and all wrongful-death beneficiaries.

15. This Complaint is brought against Jamie Mackay individually and Fireside Resort Inc., including all Fireside Resort Inc. agents and officers involved with the permitting, construction, excavation and supervision of the 120 S. Indian Springs Property in September 2018 and all Fireside owners, officers and employees responsible for the hiring, supervision and training of all employees including employees working at the 120 S. Indian Springs Property where the deaths occurred.

16. Fireside Resort Inc. is the entity legally responsible for any and all acts and omissions of its officers, directors, and agents.

III. JURISDICTION AND VENUE

17. Plaintiffs re-allege and incorporate the paragraphs set forth above.
18. This Court has subject matter jurisdiction because these events occurred in Teton County, Wyoming, and the amount in controversy far exceeds \$50,000.00 exclusive of interest and costs.
19. This Court has personal jurisdiction over Defendant Mackay because he resides in Teton County, Wyoming.
20. This Court has personal jurisdiction over Fireside because its principal place of business is located in Teton, County Wyoming.
21. Each Defendant has purposefully availed themselves of the privileges and benefits of conducting business in Teton County, Wyoming.
22. Venue is proper in this Court because nearly all of the events or omissions giving rise to the Plaintiffs' claims occurred in Teton County, Wyoming.
23. In compliance with the jurisdictional requirements of Wyo. Stat. Ann. § 27-14-105(b), a copy of this Complaint will be served by certified mail return receipt requested to the Director of the Division of Worker's Compensation and the Wyoming Attorney General.

IV. FACTS

24. Plaintiffs re-allege and incorporate the paragraphs set forth above.
25. At the time of the September 28, 2018 trench collapse, the 120 S. Indian Springs Drive property was titled in the name of Defendant Mackay.
26. At the time of the September 28, 2018 trench collapse, Mr. Garcia Perez was an employee of Fireside Resort, Inc.

27. The initial Teton County building permit issued July 26, 2017 was for a 999 square foot guest house listing Defendant Mackay as the Owner/Builder.

28. An amended Teton County building permit, issued August 21, 2018, listed Defendant Mackay as the owner and New West Building Company, Inc. as the Contractor.

29. Upon information and belief, Defendant Mackay terminated New West Building Company's status as the Contractor on September 5, 2018.

30. Upon information and belief, Defendant Mackay did not have the required permits for the specific trenching and grading work he was conducting at the time of the fatal incidents.

31. The location where the 12' deep and 41' long trench had been dug was "disturbed soil" as opposed to native soil, consisting in part of other dirt and rocks hauled in from another job site Defendant Mackay was involved with.

32. Disturbed soil is less stable than native soil.

33. Hauling in and using back fill to the extent Defendant Mackay did was a violation of Defendant Mackay's Teton County grading permit.

34. Upon information and belief, Mr. Juan Baez Sanchez previously worked for Defendant Mackay and/or Defendant Fireside Resort Inc. for a period of months or years.

35. By August 9, 2018, Mr. Juan Baez Sanchez was working as an employee of Defendant Mackay and Defendant Fireside Resort, Inc. Defendant Mackay had hired Mr. Baez Sanchez directing him to "keep track of time and I will pay you cash." The cash Mr. Baez was paid was administered through Defendant Fireside.

36. Defendant Mackay, via text messages to Mr. Baez Sanchez, continuously gave orders, directions and exercised control over the work being performed by Mr. Baez Sanchez and Mr. Garcia Perez.

37. On Saturday August 25, 2018, Defendant Mackay texted Mr. Baez Sanchez, "Start the trench for the water line at the house dig slow ; hand digging as there's a lot of stuff. Then go up the road later like 8:00 – 8:30."

38. At 2:36 PM on Sunday August 26, 2018, Defendant Mackay texted Mr. Baez Sanchez ordering him to, "Keep working regardless of what anyone says."

39. At 10:51 AM on Saturday September 8, 2018, Defendant Mackay texted Mr. Baez Sanchez a photo of green tape, directing "Use this tape."

40. On Monday September 10, 2018, Defendant Mackay texted Mr. Baez Sanchez "How's it going?", "Get victor to help you backfill today", "Call him.", "Hand dig around the gas line 3' around and 1' under it."

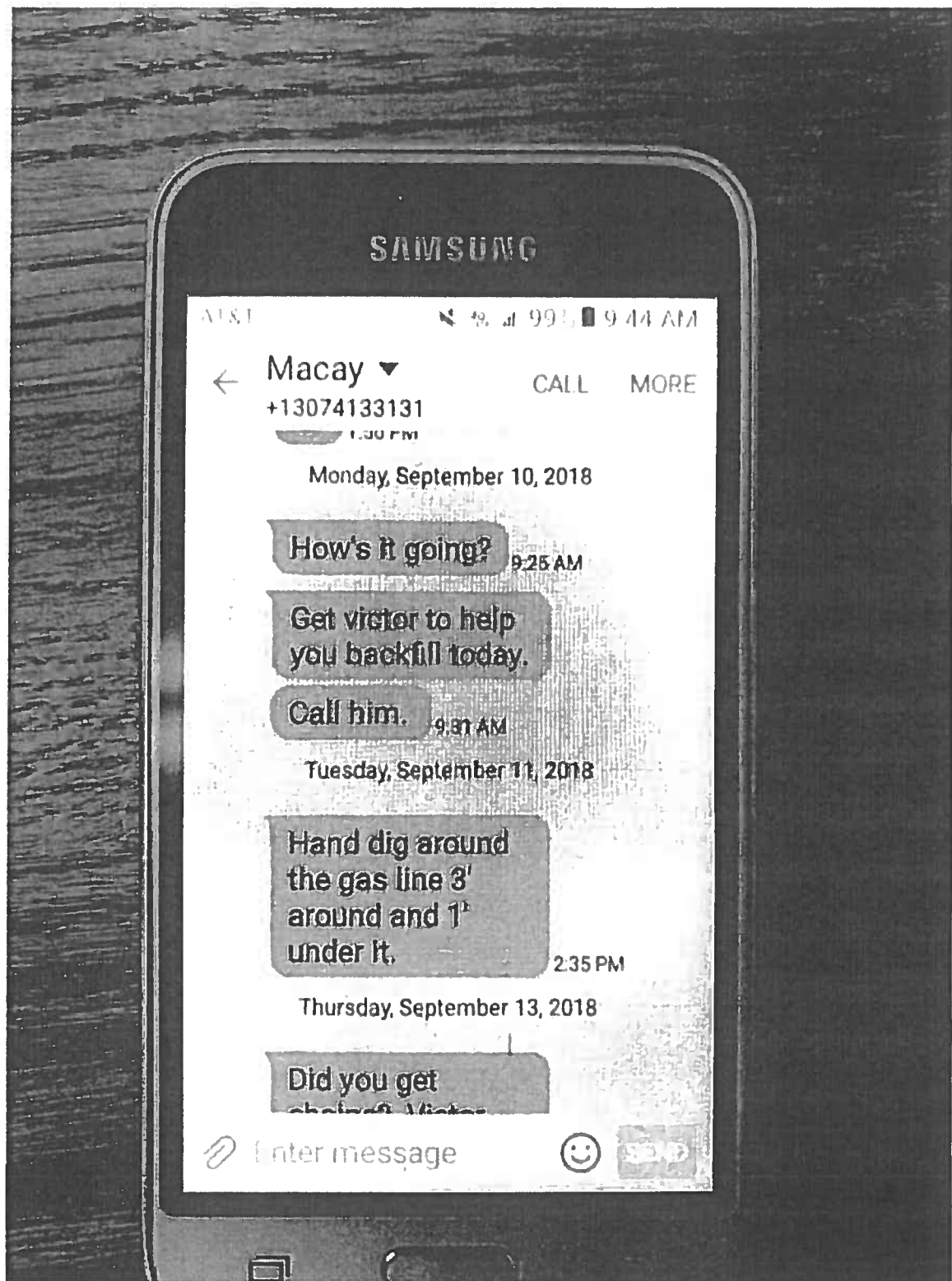
41. Upon information and belief "Victor" refers to Mr. Victoriano Garcia Perez.

42. On Friday September 14, 2018, Defendant Mackay texted Mr. Baez Sanchez a series of orders and directions including, "Foam the holes.", "Don't back fill tell [sic] we talk.", "Parts are at silver creek ask for Heath under Rodney's name." and "How's the creek?".

43. Also on Wednesday September 19, 2018, at 7:07 PM, Mr. Baez Sanchez texted Defendant Mackay that he had worked "80 hours regular And 36 ½ overtime" following that text with "Regular \$ 36."

44. Upon information and belief, Defendant Mackay and Defendant Fireside Resort Inc. paid Mr. Baez Sanchez \$36 an hour for regular time worked and \$54 an hour for overtime.

45. On Thursday September 20, 2018, Mr. Baez Sanchez texted a photo to Defendant Mackay and Mackay responded by directing, "Ok dig back and we will connect to one of them" and "Thanks".



46. On Friday September 21, 2018, Defendant Mackay asked Mr. Baez Sanchez "How's it going." Decedent responded, "Is going" and "Wher [sic] is may [sic] check." Defendant Mackay responded, "Brandy is bringing it." Later on September 21, Decedent Mackay inquired, "How's the pipe?" and "How did it go."

47. Upon information and belief, Brandy refers to Brandy Larson, the Director of Operations at Defendant Fireside.

48. On Saturday September 22, 2018 Defendant Mackay texted Mr. Baez Sanchez "How's everything?" and then directed, "If you have time fix the driveway more still some bumps and ...".

49. On Thursday September 27, 2018 a three-way text chain including Defendant Mackay, Jeremie Moore, and Mr. Baez Sanchez began with Defendant Mackay texting a gate code. Jeremie Moore responded, "New code? Machine is on site. Juan to start with French drain then clean out the daylight piece. Good." Defendant Mackay responded "Yes."

50. On Friday September 28, 2018 a delivery driver near 120 S. Indian Springs Drive first noticed an unoccupied idling excavator and then saw the partially buried body of Mr. Baez Sanchez.

51. The Teton County Sheriff's Office responded to the location, reporting that the twelve to fifteen foot trench for a pipe installation had no shoring or other collapse-prevention measures and had in fact collapsed.

52. It took emergency responders approximately eight hours to recover the bodies of Mr. Juan Baez-Sanchez who was partially buried, and Mr. Victoriano Garcia-Perez who was completely buried.

53. Teton County Coroner Dr. Brent Blue concluded the men died from compression asphyxiation and said the lack of safety shoring of the trench walls was a contributing factor.

54. Pursuant to Wyoming Statute § 27-14-108(a)(ii)(D), Mr. Baez Sanchez and Mr. Garcia Perez were engaged in 'Construction' work, an extrahazardous industry. Under Wyoming law, Defendants Mackay and/or Fireside Resort, Inc., had a mandatory obligation to pay premiums to the Wyoming Workers' Compensation fund on behalf of each employee.

55. Defendant Mackay and Defendant Fireside Resort Inc. failed to pay Workers' Compensation premiums to the Wyoming Workers' Compensation fund on behalf of their employees Mr. Baez Sanchez and Mr. Garcia Perez.

56. Mr. Baez Sanchez and Mr. Garcia Perez died while working in the course and scope of their employment for Defendants Mackay and Fireside.

57. OSHA and industry standards mandate certain protective measures for trench excavation work so that workers and employees are protected from falling objects and trench collapses or cave-ins.

58. Defendants' failures to follow OSHA and industry standards caused the trench collapse/cave-in resulting in Juan Baez Sanchez and Victoriano Garcia Perez deaths.

59. As a direct and proximate result of the negligent acts and omissions of each Defendant, all of Mr. Baez Sanchez and Mr. Garcia Perez wrongful-death beneficiaries suffered damages as more particularly set forth below in the section of this Complaint entitled "Damages."

V. PLAINTIFFS' FIRST CAUSE OF ACTION: NEGLIGENCE

60. Plaintiffs re-allege and incorporate the paragraphs set forth above.

61. Under Section 5(a)(1) of the Occupational Safety and Health Act of 1970,

employers are required to provide their employees with a place of employment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm."

62. Employers have a legal obligation to provide a workplace free of conditions or activities that the employer or the industry recognizes, or should recognize, as hazardous and that cause, or are likely to cause, death or serious physical harm to employees, when there is a feasible method to abate the hazard.

63. At the time and place of the events described herein, Defendants owed a non-delegable duty to maintain their properties in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to another, the seriousness of the injury, and the burden of avoiding risk.

64. At the time and place of the events described herein, Defendants, in their capacities as the owner, builder, and employers, owed Mr. Baez Sanchez and Mr. Garcia Perez a duty to act with reasonable care under all the circumstances, including the duty to take precautions to protect Mr. Baez Sanchez and Mr. Garcia Perez from dangers that are foreseeable from the excavation and trenching work occurring on Defendants' premises.

65. At the time and place of the events described herein, Defendant Mackay, as the owner and builder at the 120 S. Indian Springs Drive property, breached and violated his duty of reasonable care to Mr. Baez Sanchez and Mr. Garcia Perez.

66. The acts and omissions of each Defendant constituting such breaches and violations include, but are not limited to, the following:

- a. Failure to exercise reasonable care under all of the circumstances;
- b. Failure to provide and maintain a safe work environment;
- c. Failure to maintain a safe condition of the premises;

- d. Failure to provide a safe means of egress in a 12' deep by 41' long trench;
- e. Failure to ensure that excavated material was located at least two feet from the edge of the trench;
- f. Failure to conduct daily inspections of excavation and protective systems to prevent trench collapses and/or cave-ins;
- g. Failure to ensure adequate cave-in protection was being used while Mr. Baez Sanchez was working in a 12' deep by 41' long trench;
- h. Failure to provide support systems, shield systems or any protective systems, including but not limited to a trench box;
- i. Failure to initiate, employ and enforce safety procedures to ensure a safe work environment;
- j. Failure to take reasonable precautions to protect employees from foreseeable dangers;
- k. Failure to abide by state and federal rules and regulations that were in effect and controlling at the time of this incident; and
- l. Failure to meet the standards of care requisite in the industry; and
- m. Failure to properly train employees in safe and proper practices while conducting trench work.

67. As a direct and proximate result of each Defendants negligent, reckless, wilful and wanton acts and omissions, the wrongful-death beneficiaries of Mr. Baez Sanchez and Mr. Garcia Perez suffered damages as more particularly set forth below in the section of this Complaint entitled "Damages."

68. Defendants' acts and omissions constitute willful and wanton misconduct.

69. Defendants acted intentionally and in reckless disregard of the consequences and under circumstances and conditions where a reasonable person would know that such conduct would, in a high degree of probability, result in harm to another. Defendants' actions are so reprehensible as to warrant additional sanctions to achieve punishment and deterrence.

VI. DAMAGES

70. Plaintiffs re-allege and incorporate the paragraphs set forth above.

71. As a direct and proximate result of Defendants' negligent, reckless, willful and wanton acts and omissions, Mr. Baez Sanchez and Mr. Garcia Perez were fatally injured and Plaintiffs on behalf of all wrongful-death beneficiaries, incurred the following damages in an amount to be proven at trial:

- a. Past and future lost income including loss of future earnings;
- b. Other economic losses, directly related to each death including funeral, burial, and transportation expenses;
- c. Loss of future companionship, society and comfort;
- d. Punitive damages in a reasonable amount to be proven at trial, sufficient to adequately punish the Defendants and to serve as a deterrent and warning against future conduct of the type alleged in this complaint;
- e. All damages, not specifically enumerated herein, allowed by the laws of the State of Wyoming for the wrongful deaths of Juan Baez Sanchez and Victoriano Garcia Perez;
- f. All allowable costs, expenses and fees associated with this litigation.

WHEREFORE, Plaintiffs, Isabel Baez and Rick Thomas, in their court-appointed capacities as Wrongful Death Representatives, requests this Honorable Court to grant judgment as follows:

- I. Judgment against Defendants for economic damages in an amount consistent with the allegations contained herein and to be proven at trial;
- II. Judgment against Defendants for non-economic damages in an amount consistent with the allegations contained herein and to be proven at trial;

III. Judgment against Defendants for punitive damages in an amount consistent with the allegations contained herein and to be proven at trial; and

IV. Judgment for costs, interest, and such other and further relief as the Court deems just and equitable.

DATED this 11th day of June 2019.

Lawyers and Advocates for Wyoming



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Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs, by and through counsel, and pursuant to Wyoming Rule of Civil Procedure 38, request this matter be tried to a six-member jury.

DATED this 11th day of June 2019.

Lawyers and Advocates for Wyoming



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Attorneys for Plaintiffs

CIVIL COVER SHEET

This civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law. This form, approved by the Wyoming Supreme Court, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM)

I. CAPTION

ISABEL BAEZ, as the Wrongful Death Representative of
JUAN BAEZ SANCHEZ, Deceased; and
RICK THOMAS as the Wrongful Death Representative of
VICTORIANO GARCIA PEREZ
Plaintiffs,
vs.
JAMIE MACKAY, Individually and
FIRESIDE RESORT, INC.
Defendants.

Docket #

17998

FILED
2019 JUN 14 AM 10:03
CLERK OF DISTRICT COURT
JANIS

II. NATURE OF SUIT (Place an "X" in One Box Only)

GENERAL CIVIL

CONTRACT

☐ Business Organization Litigation
☐ Com. Const. Contract Litigation
☐ Contract Other (not Debt Collection)

TORT

☐ PI or WD - Environmental or Toxic Tort
☐ PI or WD - Fed Employer Liability Act
☐ PI or WD - Medical Malpractice
☐ PI or WD - Product Liability
☐ PI or WD - Vehicular
☐ Personal Injury Unspecified
☐ Property Damage
☒ Tort Unspecified - **WRONGFUL DEATHS**
☐ Wrongful Termination of Employment

DISSOLUTION OF MARRIAGE

☐ Divorce w/Minor Children
☐ Divorce w/o Minor Children
☐ Judicial Separation
☐ Annulment

DOMESTIC RELATIONS

☐ Custody/Parental Visitation
☐ Grandparental Visitation
☐ Paternity
☐ Child Support/Parental Contribution
☐ Child Support w/ Paternity
☐ UIFSA w/Paternity
☐ UIFSA
☐ Dom Register Foreign Judgment
☐ TPR State/DFS
☐ TPR Family/Private

PROBATE

☐ Ancillary Admin/Foreign Prob
☐ Decree of Title Distribution
☐ Determination of Heirship
☐ Letters of Administration
☐ Estate Unspecified
☐ Summary Probate
☐ Testate/Intestate Estate
☐ Will Only Filings
☐ Trust Matters
☐ Guardianship
☐ Conservatorship
☐ Guardian & Conservatorship

ADOPTION

☐ Adoption
☐ Confidential Intermediary

CIRCUIT COURT

☐ Small Claims
☐ Forcible Entry and Detainer
☐ Stalking Protection Order
☐ Family Violence Protection Order
☐ Sexual Assault Protection Order

PROPERTY

☐ Property with Mineral Rights
☐ Property w/o Mineral Rights

OTHER CIVIL

☐ Appointment/Removal of a Fiduciary
☐ Arbitration Award Confirmation
☐ Birth Certificate Amendment/Establishment
☐ Debt Collection
☐ Declaratory Judgment
☐ Emancipation of Minor
☐ False or Frivolous Lien
☐ Foreign Judgment
☐ Foreign Protection Order/Foreign Stalking Order
☐ Forfeiture of Property
☐ Governmental Action Environmental Case
☐ Injunction
☐ Material Witness/Foreign Subpoena
☐ Name Change
☐ Involuntary Hospitalization
☐ Public Nuisance
☐ Specific Relief
☐ Structured Settlement Protection Act
☐ Successor to Civil Trust Appointment
☐ Transcript of Judgment
☐ Writ of Habeas Corpus
☐ Writ of Mandamus
☐ Writ of Replevin
☐ Unspecified

III. RELATED CASE(S) IF ANY (see instructions)

Docket No. CV AC, 17959 Judge DAY

Court (if different)

Docket No. CV AC, 17960 Judge DAY

Court (if different)

IV. \$ AMOUNT IN CONTROVERSY, (estimated) (see instructions)

\$ 1,000,000+ EACH PLAINTIFF

SIGNATURE OF ATTORNEY OF RECORD OR PRO SE LITIGANT

DATE

249

6/11/19

COPY

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FILED
TETON COUNTY WYOMING
2019 APR 11 AM 10:07
JANIS L. BROWN

IN THE DISTRICT COURT OF TETON COUNTY, WYOMING
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Defendants.

Civil No.

17998

SUMMONS

Issued


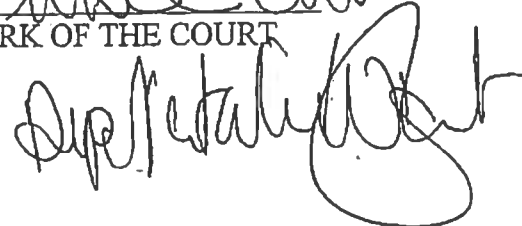
TO: JAMIE MACKAY
2780 North Moose-Wilson Road
Wilson, WY 83014

YOU ARE HEREBY SUMMONED and required to appear and defend against the Complaint in this action, which is herewith served upon you, by serving upon the undersigned an Answer or other proper response within twenty (20) days after the service of this Summons and Complaint upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

DATED this 11 day of June 2019.

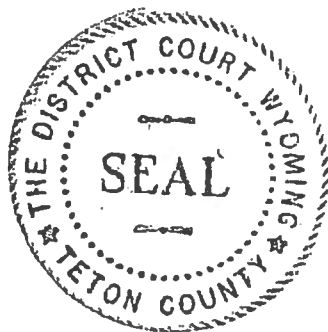
(Seal of the District Court)


CLERK OF THE COURT


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TETON COUNTY, WYOMING
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JANIS M. BENTLEY
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Defendants.

Civil No. 17998

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Unsett

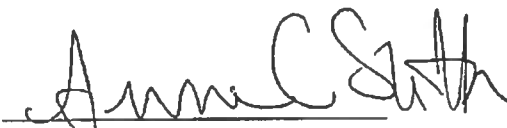
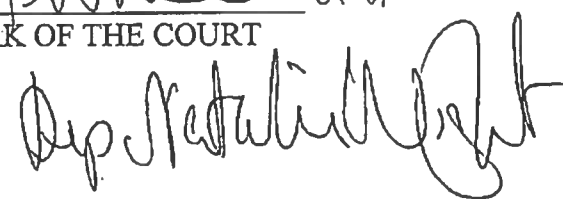
TO: FIRESIDE RESORT, INC.
c/o Registered Agent:
JAMIE MACKAY
2780 North Moose-Wilson Road
Wilson, WY 83014

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If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

DATED this 11 day of June, 2019.

(Seal of the District Court)


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